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PATENT DEPARTMENT

UNITED STATES DEPARTMENT OF COMMERCE
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Washington, D.C. 20231

(JH)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/972,659

11/18/97

GLENN

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4030B

HM12/0608

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101 WOOD AVENUE

ISELIN NJ 08830-0770

EXAMINER

PRYOR, A

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

06/08/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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TECH CENTER 1600/2900

Docketed 6/14/99 by DF
Response due 9/8/99
Resp. to Office Action
Attorney RFK

Office Action Summary

Application No.
08/972,659

Applicant(s)
Glenn et al.

Examiner
Alton Pryor

Group Art Unit
1616



☒ Responsive to communication(s) filed on Nov 2, 1998

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-16 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 15 and 16 is/are allowed.

☒ Claim(s) 1, 4, 8, 10, and 11 is/are rejected.

☒ Claim(s) 2, 3, 5-7, 9, and 12-14 is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 4,6

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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First Action on the Merits

Action Summary

Claims 1-16 are pending. Claims 1,4,8,10,11 are rejected. Claims 2,3,5-7,9,12-14 are objected to. Claims 15,16 are allowable. In light of search, the election requirement made by the examiner on 10/2/98 will not be maintained.

Declaration Defect - Improper Duty to Disclose Statement

It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The term “**examination**” must be replaced by the term “**patentability**”.

Claim Rejection under 35 U.S.C. 102(a)

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1,4,8,11 are rejected under 35 U.S.C. 102(a) as being anticipated by Eastin (US 5,628,144). The reference teaches a method for priming (enhancing crop growth or photosynthesis) a seed and/or root (horticultural crop) which comprises applying to the surface of said seed or root hydrophilic particulate materials (clay, diatomaceous earth) wherein the

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particles allow for the exchanges of gases by the crop. See abstract, column 2 lines 36-67, column 3 lines 26-52, column 12 lines 13-19.

Claim Rejection under 35 U.S.C. 103(a)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,4,8,10,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Eastin (US 5,628,144). The reference teaches a method for priming (enhancing crop growth or photosynthesis) a seed and/or root (horticultural crop) which comprises applying to the surface of said seed or root particulate materials (clay, diatomaceous earth) wherein the particles allow for the exchanges of gases by the crop. The reference does not teach that said crop is an agricultural or ornamental crop. An ordinary artisan would have been motivated to apply the method to agricultural as well as ornamental crops with the expectation that said method would be effective in promoting or enhancing photosynthesis because agricultural and ornamental crops fall within the said horticultural genus. Species of the same genus would be expected to have similar properties and therefore, respond similarly to the same method.

Claim Objection / Allowable Subject Matter

Claims 2,3,5-7,9,12-14 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base

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claim and any intervening claims. The prior art does not teach the instant method comprising a particulate material having a block brightness of 90, hydrophobic core and hydrophillic surface, micron size of 3 and below or hydrophillic material being calcium carbonate and/or kaolin. Claims 15,16 are allowable, because the prior art does not teach a specific block brightness of 90 as in the instant method.

Telephonic Inquiries

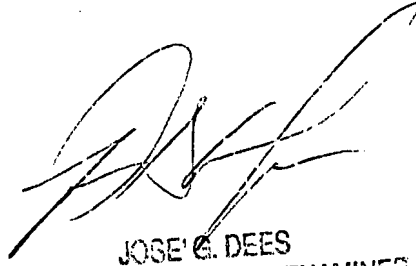
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton Pryor whose telephone number is (703) 308-4691. The examiner can normally be reached on Monday through Friday from 8:00 a.m. to 4:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

ANP

6/4/99


JOSE G. DEES
SUPERVISORY PATENT EXAMINER
1616